No. 21-1206

ORIGINAL

In The

Supreme Court of the United States

JOHN H. PAGE,

Petitioner,

v.

JOSEPH R. BIDEN JR., in His Official Capacity as President of the United States,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The DC Circuit

PETITION FOR A WRIT OF CERTIORARI

JOHN H. PAGE
1077 30th Street NW
Apt. 411
Washington, D.C. 20007
Tel: 202-352-6952
pro se

QUESTION PRESENTED

The Question: Can a federal court dismiss a case based on lack of jurisdiction over relief that wasn't requested, despite it being empowered to order POTUS to correct a ministerial error that blocks the guarantee of representation which is the foundation of United States government?

For context, this court already affirmed in *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000) that it is impossible for the Art. I, § 8, cl. 17 District of Columbia to be Columbia's State for the purposes of representation in Congress[1] and the constitutionally guaranteed State representation rights of Columbia persons survived its cession in 1801.[2] Petitioner asked for the correction of the list of States, he has not asked for apportionment.

---

[1] *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000) affirmed (emphasis added): "As originally provided under Article I, section 3, the Senate was to be "composed of two Senators from each State," chosen not "by the People of the several States," as in the case of the House, but rather "*by the Legislature thereof.*" U.S. CONST. art. I, § 3, cl. 1 (emphasis added). **The impossibility of treating Congress as the legislature under that clause is manifest**, as doing so would mean that Congress would itself choose the District's senators."

[2] *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000) affirmed, section B, emphasis added:

> "From the foregoing, it is apparent that **the cession transaction could not lawfully terminate** or effectively waive the right of "persons" ceded, particularly the 1790-1800 voters, to **voting representation in the House of Representatives**. Nor could the cession preclude voting representation of the "persons to be" in the ceded area."

QUESTION PRESENTED – Continued

In the instant complaint, Respondent does not dispute:

a) Columbia's State rights of representation are reserved to it by U.S. Const. Amendment X.

b) The 1801 cession explicitly preserved Columbia's State law rights including for State Legislature elections,[3] which were held in November 2020.

c) Columbia had sufficient population by 1860 to justify minimal State representation of two U.S. Senators and one U.S. House Representative.

> "Under established constitutional principles, neither the then-People of the District nor their Posterity forfeited that constitutional right when the District became the Seat of Government, and **neither Maryland, nor the United States or its officers, had the constitutional authority to forfeit that right for them**."

N.B. in the above the "District" necessarily means "Columbia" since the Federal District did not exist before cession.

[3] From Columbia State law (see Maryland State Constitution) at cession:

> "I. THAT the Legislature consist of two distinct branches, a Senate and House of Delegates, which shall be styled, The General Assembly"
>
> "XXVII. That the Delegates to Congress, from this State, shall be chosen annually, or superseded in the mean time by the joint ballot of both Houses of Assembly; . . . ."

QUESTION PRESENTED – Continued

d) The President of the United States ("POTUS" or "Respondent") is by oath bound to follow the law and has a ministerial, non-discretionary duty to send a list of States to Congress.[4]

e) The Petitioner has suffered harm and there is no harm to Congress' U.S. Const. art. I, § 8, cl. 17 exclusive rights in the District.

The issuance of a list of States and their population is a ministerial duty required under *2 U.S.C. § 2a(a)*, but the District Court's Memorandum Opinion at App 6 hereto states "Mr. Page seeks an injunction requiring the President to include Columbia's residents in the congressional apportionment calculation following the decennial census." This false statement about the relief requested was subsequently used to conclude that relief is not simple and definite and thus the court lacked jurisdiction. Petitioner showed this clear error in a motion for reconsideration but the District Court decided not to respond.

---

[4] *2 U.S.C. § 2a(a)* " . . . the President shall transmit to the Congress a statement showing the whole number of persons in each State."

PARTIES TO THE PROCEEDING

The petitioner is John H. Page a person residing in Columbia for over 20 years. Respondent is Joseph R. Biden Jr., in His Official Capacity as President of the United States.

RELATED CASES

CASE 1:

Initial Caption: JOHN H. PAGE, Plaintiff v. DONALD J. TRUMP, in his official capacity as President of the United States, Defendant., Later Caption: JOHN H. PAGE, Plaintiff v. JOSEPH R. BIDEN, in his official capacity as President of the United States, Defendant, Case No. 1:20-cv-00104, The United States Court for the District of Columbia, Date of judgment: January 29, 2021

CASE 2:

John H. Page, Appellant v. Joseph R. Biden, Jr., In his official capacity as President of the United States, Appellee, Case No. 21-5038, The United States Court of Appeals for the District of Columbia Circuit, Date of final judgment: December 2, 2021

Regarding this court's rules 29.4(b) and (c), neither this Petition, nor either of the related cases, question the constitutionality of any Act of Congress or State statute.

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

CONSTITUTION AND STATUTES

TABLE OF AUTHORITIES – Continued

Petitioner, an inhabitant of Columbia that is harmed by lack voting representation in Congress respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The district court's opinion in the subject case 1:20-cv-00104-CRC Document 22 (D.D.C. Jan. 29, 2021) is reproduced verbatim at App 6-21.

JURISDICTION

Applicant brings this petition timely and this Court has jurisdiction under 28 U.S.C. § 1254(1).

The State of Columbia retains exclusive jurisdiction over its right to representation in Congress, which right has never been delegated to any branch of the Federal Government. Under the terms of Columbia's cession,[7] the State of Columbia has the same law as in Maryland's State Constitution (as it was at cession).

The Federal courts and Congress enjoy exclusive jurisdiction in Columbia over any matter controlled by the U.S. Constitution. Congress has no jurisdiction to assume the powers of a State Legislature for the purpose of representation in itself.[1]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in this case are: U.S. Const. art. I, § 2 & 3, U.S. Const. art. I, § 8; U.S. Const. art. III, U.S. Const. art. IV, § 3, U.S. Const. Amendment X, U.S. Const. Amendment XIV, *2 U.S.C. § 2a(a).*

STATEMENT

A. Background

The underlying suit was brought to enforce *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000), not to overturn it. As stated in the Complaint,[5] the theory proposed here is de novo.

Petitioner is not an advocate of the D.C. Statehood movement which is certainly not the theory presented here.[6]

---

[5] Complaint para 17 page 5 "E. Is the District of Columbia or the State of Maryland a state for the purposes of Columbia's participation in the Congressional franchise? 17. No, this answer has already been affirmed in *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000). The opinion in that case only considers the Adams Plaintiffs' theories of representation through the District of Columbia or the State of Maryland. The opinion in Adams did not consider any theory of participation under the State laws of Columbia assented to by Defendant."

[6] *The D.C. Statehood movement.* Some in Columbia theorize about setting up a new state within its boundaries and reducing the size of the Federal District by Act of Congress, e.g., through HR 51 which current draft is unconstitutional because it does not

Per footnote 2 above, Petitioner has not waived his right to such representation and neither Maryland nor the United States government can have forfeited it for him. On checking the deed of Columbia's cession from Maryland, Petitioner verified his rights of representation through a State had not been terminated and indeed, per footnote 3 above, State law explicitly memorializing those rights remained intact under the terms of cession according to both Maryland and Congress. The cession thus satisfied and was accepted under U.S. Const. art. IV.

Laws of Maryland, Act of Cession of Columbia, Volume 204, Chapter XLV Page 573, December 1791. Contrary to popular belief, Maryland only ceded exclusive jurisdiction over Columbia to Congress with respect to Congress rights under U.S. Const. art. I, § 8, cl. 17. Congress does not have unlimited powers in the jurisdiction of Columbia, as we know from *Adams* in footnote 1, neither District nor Congress are States for the purposes of representation in Congress. That right remained with Columbia and its people. This is a crucial point so the text presented here[7] is from the original

---

pass the requirements of art. IV for the consent of the ceding state legislature. This movement is nothing to do with Petitioner's theory herein.

[7] 1791 Act of Maryland ceding Columbia:

> II. Be it enacted, *by the General Assembly of Maryland,* That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be for ever **ceded and relinquished** to the congress and government of the United States, in full and absolute right,

deed of cession in the Maryland Archives with key limitations in bold face.

That Congress explicitly agreed to and acknowledged Columbia State law in its acceptance of the cession under U.S. Const. art. I, § 8, cl. 17. is not disputed by Respondent. Respondent has not opposed this court's precedent wherein inhabitants of a federal enclave within the Union do not lose their right to representation in Congress per *Evans v. Cornman*, 398 U.S. 419 (1970) in which the inhabitants of the NIH art. I, § 8, cl. 17 federal enclave's rights fall exclusively under State law, not Federal. Respondent has no discretion to exclude Columbia from art. I participation in Congress and must therefore be compelled to change "District of Columbia" to "State of Columbia" on the ministerial census returns.

---

and exclusive jurisdiction, as well of soil as of persons residing, or to reside, thereon, **pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States**; provided, that nothing herein contained shall be so construed to vest in the United States any right of property in the soil, as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States; and provided also, that **the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease** or determine until congress shall by law provide for the government thereof, under their jurisdiction, **in manner provided by the article of the constitution before recited**.

Congress' acts in Columbia's cession are and were constitutional so it is not a party hereto. Congress would by the relief requested be bound to admit two U.S. Senators and one House Representative from Columbia without waiting for reapportionment which only occurs every four years. The involvement of the Secretary of Commerce is unnecessary, and Petitioner repeats that Wyoming is relevant, its representatives being admitted even before a census was carried out.

Why, then, is the Office of the President of the United States ("POTUS") not being ordered to perform the definite, non-discretionary duty demanded by constitution and statute to provide correct information to Congress as to the list of art. I states? Not doing so causes the most serious injury and mocks the supreme law.

B. Proceedings Below

District Court for the District of Columbia

The District Court found that Congress agreeing to Maryland State Law (as it was then) at cession was merely the starting point for D.C. laws. This is irrelevant, it is impossible for Congress to be a State Legislature for participation in itself. Rather, Columbia's inhabitants retain the rights to representation in Congress which must run through a State and Columbia is the acknowledged successor to Maryland with exactly the same State Constitution as at cession.

The District Court found that Columbia would need to seek readmission to the Union as a State in order to regain the right to representation in Congress. The District Court's justification was "It hardly follows that Congress meant to recognize a new sovereign state with laws inherited from Maryland." but this view contradicts the affirmed precedent in *Adams* at footnote 2 that "neither Maryland, nor the United States or its officers, had the constitutional authority to forfeit that right for them." Congress accepting the cession in 1801[8] shows that state law rights were properly vested in Columbia in accordance with U.S. Const. art. IV. The District Court opinion held that this is not the case and is consequently unconstitutional and violates U.S. Const. Amendment X. It is well known that Federal courts may not invent some non-constitutional Federal common law to negate State law rights and Respondent has not claimed so.

The District Court also found that although the issuance of a list of States and their population is a ministerial duty required under *2 U.S.C. § 2a(a)*, that the relief requested by Petitioner would require full reapportionment which is a complex process also involving the Secretary of Commerce. **The District Court's opinion is not valid because it is based on false premises**, Petitioner had not asked for such relief by

---

[8] *An Act Concerning the District of Columbia*, 2 Stat. 103 (1801) (the "1801 Organic Act") at section 1: " . . . the laws of the state of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that state to the United States, and by them accepted as aforesaid."

way of reapportionment. Petitioner showed this in a motion for reconsideration but the District Court invoked a right not to respond.

U.S. Court of Appeals for the District of Columbia

The Court of Appeals did not affirm any of the District Court findings to do with Columbia and its State rights.

It did, however, side with the District Court that it did not have jurisdiction to compel POTUS to reissue the census stating "The district court correctly dismissed appellant's complaint for lack of jurisdiction" and that the courts cannot enjoin the President citing *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) and *Swan v. Clinton*, 100 F.3d 973, 977-78 (D.C. Cir. 1996).

Petitioner asked for an Appeals Court review en banc pointing out that courts had previously enjoined the President, e.g., in *NTEU v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974) ,"the President may not refrain from executing laws duly enacted by the Congress as those laws are construed by the judiciary" but that petition was denied on December 2, 2021.

First, Petitioner highlights the **District Court falsification that the relief requested was apportionment** and thus not simple, requiring the involvement of the Secretary of Commerce. Through this error the District Court without justification effectively

amended the subject Complaint and misled the Court of Appeals. The following is from page 6 of Petitioner's MEMORANDUM IN SUPPORT OF APPELLANT'S OPPOSITION TO APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE (U.S. Court of Appeals for the District of Columbia, Case 21-5038 Document 1909803 filed 8/11/2021):

> "**Background Error #1.** As to the substance of Appellee's procedural history Appellee, in echoing the District Court Opinion attempts to re-write the Complaint, stating:
>
> > "The complaint sought an injunction requiring the President to include the residents of an alleged state of Columbia in the congressional apportionment calculation following the decennial census."
>
> "This is simply not true, the simple relief requested in the Complaint is quoted verbatim in ¶ 3 above." which says
>
> "The curative relief requested at Complaint ¶39 page 14 is " . . . immediately correct all census returns to show the State of Columbia . . . " and may be effected by a one word amendment to the Appellee's decennial census returns to Congress (Complaint ¶39 page 14); i.e. change "District" of Columbia to "State"."

Thus when the lower courts applied *Swan v. Clinton*, 932 F. Supp. 8 (D.D.C. 1996), they did so on the basis of the **false statement in the Memorandum Opinion (at App 6 para 1 "Mr. Page seeks an**

injunction requiring the President to include Columbia's residents in the congressional apportionment calculation following the decennial census") and therefore that the relief requested was not a ministerial duty of POTUS following *Swan*:

> "A ministerial duty is one that admits of no discretion, so that the official in question has no authority to determine whether to perform the duty. *Mississippi*, 71 U.S. (4 Wall.) at 498 ("a ministerial duty . . . is one in respect to which nothing is left to discretion")"

In truth, *Swan* agrees with Petitioner's request to order Respondent to faithfully carry out a statutory, non-discretionary duty because it is ministerial and only requires the action of POTUS, the District Court's injection of apportionment into the requested relief changed the outcome. This court should correct that mistake.

Second, on *Newdow*; in that case plaintiff sought an order enjoining the President and others not to participate in a ceremony of oaths making " . . . possible actions in support of such religious elements unconstitutional. See id. at 55."

The elements concerned were the result of discretionary choices of the President who, through the Presidential Inaugural Committee which had the consent of Congress, invited two private ministers to lead invocation and benediction prayers at the inaugural ceremony. Plaintiff Newdow requested declaratory and injunctive relief in the district court to bar those

elements as violations of the First and Fifth Amendments. The district court dismissed the case.

In the instant case the remedy requested is to perform a ministerial duty according to the law, while in *Newdow* the plaintiff sought to exclude non-statutory and therefore discretionary actions of the President. The *Newdow* opinion makes this clear:

> "This case, however, challenges no statutory power, but rather **a decision committed to the executive discretion of the President** or the personal discretion of the President-elect."

In that context, then, we see that the *Newdow* opinion merely says "With regard to the President, courts do not have jurisdiction to enjoin him, see *Mississippi*, 71 U.S. (4 Wall.) at 501."

Nowhere in the lower court's decisions in this case is there any showing that the discretionary form of Presidential oath is equivalent to correcting a one word mistake in statutory census returns.

If a President were to omit, for example, Wyoming or any other part of the Union for which Congress had consented to a State constitution this court would be empowered and indeed compelled under its oath of duty to order the President to follow the U.S. Constitution.

Mississippi, 71 U.S. (4 Wall.) at 501 is also not about compelling a President to perform a ministerial duty as in the instant case. This is clear from the

Syllabus in *Mississippi* "The President of the United States cannot be restrained by injunction from carrying into effect an act of Congress alleged to be unconstitutional, nor will a bill having such a purpose be allowed to be filed." In the instant case it is not alleged that any of the acts of Congress are unconstitutional or that the subject ministerial duty specified in *2 U.S.C. § 2a(a)* is in any way unlawful. *Mississippi* is, therefore, not a relevant precedent.

Thus, Petitioner holds that the lower court decisions were based on an erroneous reading of the Complaint which resulted in a false statement of the relief requested leading to a mistaken conclusion that the relief requested was not ministerial. Neither of the lower courts' decisions contain any justification for their de facto alteration of the underlying Complaint to include apportionment in the relief.

REASONS FOR GRANTING THIS PETITION

a) POTUS' inaction to correct a mistake that disenfranchises 700,000 people from representation in Congress is contrary to the U.S. Constitution and a stain on the United States government. That this has not been corrected since the Civil War makes it the largest disenfranchisement in U.S. history.

b) The jurisdiction of the State of Columbia over matters reserved under *U.S. Const. Amendment X* is being violated and the United States is not honoring its constitutional guarantees of representation.

c) The District Court made clear errors in attributing to Congress the power to decide state rights. The District Court opinion overturns multiple precedents including *Adams* and *Evans v. Cornman*, 398 U.S. 419 (1970), re-writes the terms of the 1801 cession and ignores U.S. Const. Amendment X protections from Federal interference.

d) Lower courts may not falsify a Complaint's requested relief. Petitioner cannot think of any other purpose than to turn the claimed relief into a discretionary act. Regardless of intent or mistake the District Court acted outside due process and never held a hearing in the case.

By misapplying *Newdow* and *Swan*, the lower court gives POTUS immunity from any remedy to correct a mistake in performance of a definite non-discretionary duty. If there is no recourse against POTUS for simple omissions in the list of States the makeup of Congress is open to abuse and the U.S. Constitution is not being protected. It would be negligent of

the Supreme Court not to show that, while afforded much discretion, the President is not above the law.[9]

CONCLUSION

The President of the United States:

- does not decide who inhabits a State for the purpose of representation in Congress. That decision is taken by Congress with the consent of the ceding State Legislature.
- assented to the terms of the cession of Columbia which included its State Constitution with undelegated representation rights protected from federal interference.
- knows that the 1860 census showed the State of Columbia had sufficient population to trigger admission on the same basis as other States.
- knows the U.S. Supreme Court decided that residence in a U.S. Const. art. I, § 8, cl. 17 federal enclave located in the Union does not cancel one's art. I rights to representation through a State. See *Evans v. Cornman*, 398 U.S. 419 (1970).[10]

---

[9] U.S. Constitution art. III, § 2 "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States ... to Controversies to which the United States shall be a Party."

[10] *Evans v. Cornman*, 398 U.S. 419 (1970) "Residents on grounds of the National Institutes of Health are treated by the

Apportionment was not the requested relief. The District Court effectively altered the complaint (see above) to make relief require apportionment and thus appear discretionary as in *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010). The only relief requested is correction of a mistake in carrying out a non-discretionary ministerial duty under *2 U.S.C. § 2a(a)* as defined in *Swan v. Clinton*, 932 F. Supp. 8 (D.D.C. 1996).

The Appeals Court, clearly based on the false District Court Opinion, found that the case presented did not overcome the standard for dismissing a summary affirmance citing *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987).

Petitioner has shown here a) the clear merits of his case and b) how the jurisdiction was erroneously assessed by both the lower courts. As a result this court is petitioned to conclude that Petitioner has met the burden for the consideration of a writ of certiorari.

State of Maryland, in which that federal enclave is located, as state residents to such an extent that it violates the Equal Protection Clause of the Fourteenth Amendment to deny them the right to vote in that State. *Evans*, 398 U.S. 420-426."

When the President of the United States, by erring in a simple statutory duty causes a serious harm, in this case lack of representation in Congress, U.S. Const. art. III courts have the power to order a remedy.

Respectfully submitted,

JOHN H. PAGE
1077 30th Street NW
Apt. 411
Washington, D.C. 20007
Tel: 202-352-6952
pro se